

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

*In re Clearview AI, Inc. Consumer Privacy
Litigation*

)
) Case No. 1:21-cv-00135
)
) Judge Sharon Johnson Coleman
)
) Magistrate Judge Maria Valdez
)

**AFFIDAVIT OF KEVIN METCALF IN OPPOSITION TO
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

COUNTY OF WASHINGTON)
) ss.:
STATE OF ARKANSAS)

KEVIN METCALF, being duly sworn, deposes and says:

1. My name is Kevin Metcalf and, since February 2011, I have been a Deputy Prosecuting Attorney at the Washington County Prosecutor's Office in Arkansas, where I prosecute felonies. I focus on the intersection of technology and crime, which includes substantial work investigating crimes related to the online sexual exploitation of children.

2. In February 2019, I founded the National Child Protection Task Force ("NCPTF") and have been its Chief Executive Officer since that time. The NCPTF is a non-profit organization with approximately 50 volunteers that include active-duty law enforcement officers who volunteer their time to help state, federal, and international law enforcement agencies investigate online child abuse, recover exploited children, and hunt sexual predators and human traffickers. Although the NCPTF sometimes helps law enforcement officers solve technology-related crimes unrelated to child exploitation, including terrorism, their priority is to bring abused and exploited children to safety.

3. The members of the NCPTF help provide detectives, analysts, and officers access to investigative expertise and resources that are unavailable or underfunded in most law enforcement organizations. For example, the NCPTF brings together recognized experts in facial recognition technology, strategic legal applications, open-source intelligence, cellular mapping and analysis, dark-web investigations, and cryptocurrency to aid law enforcement agencies everywhere.

4. Before I became a prosecutor, I worked in law enforcement for more than 20 years. From 1990 to 1998, I worked as a police officer at the Fort Smith Police Department in Arkansas. In 1998, I worked briefly for the Border Patrol in San Diego, California, before returning to the Fort Smith Police Department. After the September 11, 2001 attacks, I worked as a Federal Air Marshall from 2002 to 2007. I left the Federal Air Marshall Service to attend law school, during which I worked part-time for the Washington County, Arkansas, Sherriff's Department. I have been a prosecutor in the Washington County Prosecutor's Office in Arkansas since I graduated from law school.

5. Because many of the crimes I investigate and prosecute involve the online exploitation of children, I need to keep up with the latest technological advances. Accordingly, I have undergone extensive training that includes the National Computer Forensics Training Institute, the National White Collar Crime Center ("NW3C"), and the FBI Cellular Analysis Survey Team, among others. I have also developed a system for working with cell phone-related data in criminal cases, which I teach to other members of law enforcement. I also published a series of instructional books about using technology, such as cellphone data, while investigating crimes. I have recently been asked to develop an advanced cyber investigation course for the NW3C.

6. In 2019, I received the Morgan's Choice Award from the Morgan Nick Foundation. This award recognized my work in recovering children, identifying predators, and developing cyber investigation concepts for law enforcement. In 2019, I also received a national Innovative Campaign Award from Homeland Security Today. This award was given to recognize my work in creating innovative investigative methodologies to find missing, exploited, and trafficked children.

7. Through my work as a prosecutor and with the NCPTF, I have assisted with the recovery of hundreds of missing and exploited children and helped identify and apprehend hundreds of sexual predators in multiple states and countries.

8. For the past year, I have trained in using the facial recognition technology created by Clearview AI, Inc. ("Clearview"). Clearview's app has been an essential tool in my efforts to locate exploited children and bring perpetrators of sexual crimes against children to justice.

9. I could give hundreds of examples of children who were being sexually exploited or raped and were rescued solely because of Clearview, but most cases follow the same general fact pattern. Law enforcement officers find videos and photos on the dark web of children being raped — many are produced by parents, siblings, or other close family members. Law enforcement knows nothing about these children other than the fact that they are being raped and that their videos and photos are being traded or sold on the dark web.

10. Using traditional investigative techniques, law enforcement officers have to carefully scrutinize every second of these rape videos hoping that the perpetrators will make a mistake and reveal a clue, such as a street sign, identification card, or receipt, that could give investigators a lead. On the dark web, predators maintain manuals of changes in the law, technological advances, and the methods investigators use to identify other pedophiles. The ready

availability of these how-to manuals means that predators make fewer mistakes that investigators can use to track them, and children continue to be exploited and raped.

11. Most of the time, law enforcement only has images of helpless children's faces with no way to identify them or bring them to safety. It is fruitless to run the faces of child rape victims, many of whom are prepubescent, through traditional law enforcement facial recognition programs because these programs are typically limited to booking photos. Sometimes, the faces of predators are present, but that is still a long shot as many of the abusers have managed to avoid arrest.

12. Traditional techniques are being used to their maximum effect. Still, the results are predictable — many exploited children continue to be raped by their caregivers, making them much more difficult to detect.

13. When law enforcement officers come to us with the faces of child rape victims or child rapists, we turn to Clearview to triage vast amounts of publicly available information. Clearview generally returns several possible matches for each child, which we then carefully analyze, sometimes with the assistance of "super-recognizers," who have special training in matching photos of people's faces.

14. We make it clear to all agencies we work with that Clearview's search results, even with a secondary triage by a super recognizer, are only a lead. The investigator must understand that he or she has the burden of gathering additional independent corroborating evidence before taking any further action. If the investigator cannot corroborate the leads, no further action can be taken.


15. With Clearview's facial recognition technology, we have helped solve hundreds of child exploitation cases fitting this general fact pattern, even though we are just one organization with approximately 50 volunteers.

16. Clearview's technology helps protect children who would otherwise slip through the cracks — children who have not been reported as missing or abused and are being raped by their parents, family members, or others close to the child.

17. Clearview's facial recognition technology helps conserve law enforcement resources by providing possible leads where none exist otherwise. It reduces fatigue and burnout by saving officers from watching hours of footage of children being raped and sexually abused. Investigators, instead of watching every second of these heartbreaking videos trying to find a way to identify the child victims or their rapists, would have another option — they could first run the faces through Clearview's database to generate possible leads.

18. Clearview's facial recognition technology is best used as a way for law enforcement to triage the billions of publicly available photos on the Internet and enable us to cull non-matching images faster and more efficiently than we would otherwise be able to. Clearview has been an essential tool in solving child exploitation cases that are otherwise unworkable. The technology helps bring child rapists to justice, bring children to safety, and save resources in understaffed law enforcement agencies.

19. Without Clearview's facial recognition technology, hundreds of children would continue to be raped, and the recordings shared on the Internet for the world to see. In my opinion, reducing Clearview's ability to serve its law enforcement clients, especially with no other alternatives, would significantly impair law enforcement's ability in Arkansas and nationwide to conduct successful investigations and the ability of law enforcement to make this world a safer place for vulnerable children.


Kevin Metcalf

Sworn to before me this 29 day of
April 2021


Notary Public

